

Internal Revenue Service
memorandum

CC:TL:Br2
LEGardner

date: AUG 29 1991

to: District Counsel, Boston NA:BOS
Attention: Barry J. Laterman, Special Litigation Assistant

from: Chief, Branch 2, Tax Litigation Division CC:TL:Br2

subject: Statute of Limitations [REDACTED]

This is in response to your request for Tax Litigation Advice, dated August 23, 1991.

ISSUES

What is the proper taxpayer entry on Form 872, consent to extend the time to assess tax, for the taxable years ending [REDACTED], [REDACTED], and [REDACTED].

RECOMMENDATION

The proper taxpayer entry on Form 872 for the taxable years ending [REDACTED], and [REDACTED], is [REDACTED], (formerly known as [REDACTED]). The proper taxpayer entry on Form 872 for the taxable year ending [REDACTED], is [REDACTED], (formerly known as [REDACTED]).

FACTS

[REDACTED] and [REDACTED] were formed by [REDACTED] to acquire [REDACTED] percent of the common stock of [REDACTED], in a leveraged buyout. [REDACTED] was wholly-owned by [REDACTED]. On [REDACTED], [REDACTED] commenced a tender offer for all of the outstanding common stock of [REDACTED]. On [REDACTED], [REDACTED] acquired approximately [REDACTED] percent of the outstanding common stock of [REDACTED]. We understand the consideration given for the stock was cash and/or notes. On [REDACTED], pursuant to a merger agreement, dated [REDACTED], [REDACTED] acquired the remaining outstanding common stock of [REDACTED]. In this merger, [REDACTED] was merged with and into [REDACTED], with [REDACTED] surviving. Since the merger, [REDACTED] has held all of the outstanding common stock of [REDACTED].

09467

ior to the merger, [REDACTED] and [REDACTED] did not have any significant assets or liabilities or engage in any other activities other than those incident to their formation, the acquisition, and the financing related to the acquisition.

On [REDACTED], [REDACTED], and its newly formed subsidiaries, adopted a business organization plan for separating the incorporated operating divisions of [REDACTED]. Under this plan, certain tangible and intangible assets of [REDACTED], which were previously utilized in connection with divisions of [REDACTED]'s businesses known as [REDACTED] and the [REDACTED], were transferred to the newly formed subsidiaries. These transfers are intended to be transactions described in section 351.

On [REDACTED], the operations of [REDACTED] were substantially all conducted by the subsidiaries of [REDACTED]. On [REDACTED], [REDACTED] and [REDACTED], merged into [REDACTED]. On [REDACTED], [REDACTED] reorganized some of its subsidiaries. On that date, all of the common stock of [REDACTED], [REDACTED], and [REDACTED] was transferred to their respective new holding companies. On [REDACTED], [REDACTED] and [REDACTED] were liquidated into [REDACTED].

On [REDACTED], [REDACTED] changed its name to [REDACTED], and the old [REDACTED] changed its name to [REDACTED]. Since [REDACTED], there have been no subsequent changes in the structure of this group.

DISCUSSION

Pursuant to Treas. Reg. § 1.1502-77(a), the common parent, with exceptions, shall be the sole agent for each subsidiary in the group, and is the proper taxpayer to consent to extend the time to assess tax on Form 872. The common parent is the highest tier domestic corporation in an affiliated group of corporations. For the taxable years ending [REDACTED], and [REDACTED], the common parent of the [REDACTED] group is [REDACTED] (currently known as [REDACTED]). For the taxable year ending [REDACTED], the common parent for this group is [REDACTED] (formerly known as [REDACTED]).

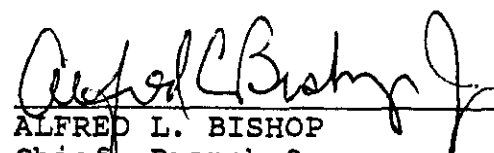
Generally, the common parent for the particular consolidated return year remains the common parent for purposes of extending the statute of limitations with respect to that year even though that corporation is no longer the common parent of that group. There are exceptions to this general rule, e.g., when the common parent goes out of existence or in some cases in a reverse acquisition.

None of the exceptions to the general rule are indicated in this case. Therefore, the general rule applies. [REDACTED], remained the surviving corporation in the merger and is still in existence. It is just no longer the common parent. Generally, when a common parent merges with another corporation and is the surviving corporation, the Service's position is that it remains the agent for the consolidated return years for which it was the common parent. Accordingly, we conclude that for the taxable years ending [REDACTED], and [REDACTED], the proper taxpayer entry on Form 872 is [REDACTED], (formerly known as [REDACTED]). For the taxable year ending [REDACTED], the proper taxpayer entry on Form 872 is [REDACTED], (formerly known as [REDACTED]).

If you have any questions regarding this matter, please call Lorraine E. Gardner, at (FTS) 566-3470.

MARLENE GROSS

By:


ALFRED L. BISHOP
Chief, Branch 2
Tax Litigation Division